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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 WASHINGTON STATE AUTO DEALERS
10 INSURANCE TRUST, an employee benefits
trust,

11 Plaintiff,

12 v.

13 AON CONSULTING, INC., a New Jersey
Corporation,

14 Defendant.

15 AON CONSULTING, INC., a New Jersey
16 corporation,

17 Third-Party Plaintiff,

18 v.

19 LUMENOS, INC., a Delaware corporation,

20 Third-Party Defendant.

NO. C07-1182 MJP

ORDER DENYING
MOTION TO DISMISS

21 This matter comes before the Court on Lumenos's motion to dismiss WSADIT's
22 improper cross-claim. (Dkt. No. 82.) After reviewing the motion, WSADIT's response (Dkt.
23 No. 108), Lumenos's reply (Dkt. No. 109), and all papers submitted in support thereof, the
24 Court DENIES the motion for the reasons set forth below.

25 Fed. R. Civ. P. 14(a) allows WSADIT to bring its claims against Lumenos. Rule
26 14(a)(3) states that an original plaintiff may "assert against the third-party defendant any claim
arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim

1 against the third-party plaintiff.” The Rule does not delineate the procedure for bringing such a
2 claim and Lumenos has not offered any binding authority which would preclude this Court from
3 allowing WSADIT to substitute its newly proposed pleading (Dkt. No. 108-2 at 4-8) for the
4 previously filed cross claim (Dkt. No. 37). Nor would such a substitution result in any prejudice
5 to Lumenos as the proposed pleading makes no substantive changes to the originally filed
6 document. The Court holds that WSADIT’s proposed pleading shall stand as the operative
7 complaint against Lumenos.

8 Lumenos contends that it should be allowed to answer WSADIT’s pleading. A jury trial
9 is scheduled in this action for November 17, 2008 and the parties have submitted their proposed
10 pretrial order. (Dkt. No. 106.) Once the Court enters the final pretrial order, that document will
11 supersede the parties’ pleadings and will control the remainder of this action. See 999 v. C.I.T.
12 Corp., 776 F.2d 866, 870-871 (9th Cir. 1985) (issue included in final order may be presented at
13 trial even if omitted from pleadings); Eagle v. American Tel. & Tel. Co., 769 F.2d 541, 548 (9th
14 Cir. 1985) (claims raised in pleadings but omitted from final order are precluded). In lieu of
15 submitting an answer to WSADIT’s pleading, the Court will allow Lumenos to propose an
16 amendment to the pretrial order that encompasses any issues Lumenos would have addressed in
17 its answer. Lumenos’s proposed pretrial order must be submitted by noon on Friday, November
18 14, 2008.

19 The clerk is directed to send a copy of this order to all counsel of record.

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21 DATED this 12th day of November, 2008.

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23 /s/ Marsha J. Pechman
24 Marsha J. Pechman
25 United States Court District Judge
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